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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

# Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

Report of the Special Rapporteur, Mr. Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 1994/41

GE.95-10600 (E)

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## Introduction

### A. The mandate

1. At its fiftieth session, in resolution 1994/41 of 4 March 1994, the Commission on Human Rights, noting both the increasing frequency of attacks on judges, lawyers and court officials and the link which existed between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights, requested the Chairman of the Commission to appoint, for a period of three years, a special rapporteur whose mandate would consist of the following tasks: (a) to inquire into any substantial allegations transmitted to him and to report his conclusions thereon; (b) to identify and record not only attacks on the independence of the judiciary, lawyers and court officials, but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they were requested by the State concerned; and (c) to study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers.

2. In its decision 1994/251 of 22 July 1994, the Economic and Social Council approved the above requests.

3. In resolution 1994/41 also, the Commission on Human Rights urged all Governments to assist the Special Rapporteur in the performance of his mandate and to transmit to him all the information requested.

4. By letter dated 21 April 1994, the Chairman of the Commission on Human Rights, following consultations with the Bureau, appointed Dato' Param Cumaraswamy (Malaysia) as Special Rapporteur.

5. In this first report, the Special Rapporteur presents his reflections upon, and understanding of, the mandate in general and the standards to which he will refer in carrying out his mandate. Thereafter, the Special Rapporteur describes the methods of work he will employ in fulfilment of his functions. In the hope of realizing the objectives of his mandate, the Special Rapporteur then comments on the resources necessary for the effective implementation of his mandate. Finally, the Special Rapporteur sets out some conclusions and makes some initial recommendations relating to his mandate and its effective implementation.

### B. Activities of the Special Rapporteur

6. The first act of the Special Rapporteur (acting in accordance with paragraph 6 of Commission resolution 1993/94 (A)) was his participation in the meeting of special rapporteurs/representatives/experts and chairmen of working groups of the special procedures of the Commission on Human Rights which was held at Geneva from 30 May to 1 June 1994, in accordance with part II, paragraph 95, of the Vienna Declaration and Programme of Action. As reflected in the report of the meeting (E/CN.4/1995/5, annex), the meeting provided the Special Rapporteur with a welcome opportunity to meet with most of the other special rapporteurs and independent experts engaged in the protection of human rights under procedures of the Commission and to consider a variety of issues

of mutual concern. While at the Palais des Nations, the Special Rapporteur took advantage of the occasion to meet with staff of the Centre for Human Rights.

7. The Special Rapporteur visited Geneva for a second time from 11 to 15 September 1994 in order to hold consultations with the Centre, including meetings with the High Commissioner for Human Rights and the Assistant-Secretary-General for Human Rights, concerning substantive and practical matters relating to implementation of the mandate. The Special Rapporteur also took the opportunity to meet representatives of some non-governmental organizations with a special interest in the mandate.

8. While at Geneva in September 1994, the Special Rapporteur undertook to establish initial direct contacts with all States Members of the United Nations, United Nations specialized agencies and bodies having a possible interest in his mandate, various intergovernmental organizations of both a universal and a regional nature, and all non-governmental organizations having a possible interest in his mandate. As a result, over 1,600 letters were sent over the subsequent months to Governments, heads of the judiciary, bar associations and a wide variety of intergovernmental and non-governmental organizations. These letters were intended not only to introduce the Special Rapporteur and his mandate to the various addressees, but also to obtain both general and specific information relating to the implementation of the mandate. Replies are being received, of which the Special Rapporteur is taking account. At the same time, the Special Rapporteur is continuing to compile lists of institutions and persons throughout the world with whom he has yet to establish direct contacts, with a view to achieving the greatest awareness concerning the existence of his mandate and the standards pertaining to the independence of the judiciary and the legal profession which are required in themselves under international law and are also necessary to achieve respect for human rights in general.

9. As it is of special importance for the Special Rapporteur to establish direct contact with national judicial institutions and professional associations of jurists, he has established such contact with most chief justices and bar associations throughout the world. This process is continuing (for example, the Special Rapporteur is soon to address himself to a number of national associations of judges) and it is hoped that close relationships will be formed between these institutions and the Special Rapporteur.

10. The Special Rapporteur is also endeavouring to establish contacts with parliamentary bodies throughout the world with a view to securing their fullest understanding of, and their active engagement in maintaining through legislative means, the independence of the judiciary and the legal profession. Positive contacts have already been established with international associations of parliaments and parliamentarians, and it is expected that the Special Rapporteur will build upon these contacts at the international, regional and national levels.

11. Pursuant to paragraph 3 (a) of Commission resolution 1994/41, the Special Rapporteur has enquired into several allegations of attacks on the judiciary. Some of his inquiries are ongoing, while others appear to have reached their

conclusion. However, in so far as the Special Rapporteur only really began his work subsequent to the Economic and Social Council's approval of his mandate near the end of July 1994, he prefers not to report at this time on any cases with which he has been concerned. It is his intention to report in detail on these matters, and on other substantive aspects of his mandate, in his report to the Commission at its fifty-second session in 1996.

12. Pursuant to paragraph 3 (b) of Commission resolution 1994/41, the Special Rapporteur is seeking to catalogue progress achieved in protecting and enhancing judicial independence and impartiality and the independence of the legal profession, partly through replies he is receiving as a result of his initial contacts with Governments and national judicial institutions and partly through studying selected country situations. In terms of making "concrete recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned", as provided for in paragraph 3 (b) of resolution 1994/41, the Special Rapporteur is paying special attention to countries undergoing transition to democracy since their needs are generally considerable and since positive steps early in their transition will contribute significantly to achievement of the rule of law, respect for human rights and peace and prosperity. In this connection, the Special Rapporteur hopes to work closely with the advisory services programme of the Centre for Human Rights in matters concerning his mandate. To this end, the Special Rapporteur would welcome: (i) being apprised on a regular basis of present and planned involvement of the Centre in the provision of advisory services and technical assistance in the area of judicial independence and impartiality and the independence of the legal profession; and (ii) being consulted on specific services and assistance designed to secure judicial independence and impartiality and the independence of the legal profession.

13. Turning to paragraph 3 (c) of Commission resolution 1994/41, the Special Rapporteur has studied the previous important reports on the subject of judicial independence and impartiality and the independence of the legal profession submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities. These reports amply illustrate that several questions of principle require further study and, ultimately, the elaboration of clear standards. While these questions are to be found mainly on the margin of the issues of independence, they nevertheless pose significant obstacles to the protection of human rights in general, for example in states of emergency. So far, the Special Rapporteur has merely taken note of a number of these questions, and it his intention to expound upon certain of them in the course of fulfilling his mandate.

14. With regard to a general matter, the Special Rapporteur wishes to comment upon his decision to choose an appropriate short title for his mandate. Upon taking up his mandate, the Special Rapporteur was referred to as the "Special Rapporteur on the independence and impartiality of the judiciary". However, he soon came to realize that this short title did not convey the breadth of his mandate, which is not well known even among those persons and institutions who hold, or should hold, an interest. For example, as was the case for the independent experts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities who dealt with the subject, the early experience of the Special Rapporteur revealed that lawyers and bar associations are

inadequately aware of the mandate and even their rights and protections under international law. For these persons, the term "judiciary" does not immediately or sufficiently indicate the inclusion of lawyers and other court officers. Consequently, the Special Rapporteur has chosen to begin using the new short title "Special Rapporteur on the independence of judges and lawyers" as of the beginning of 1995, with the understanding that the term "independence", while technically different from "impartiality", tends to imply impartiality. However, the Special Rapporteur does not mean to give the impression that he will not be concerned with structural questions relating to the institutions of the judiciary and the legal profession, including bar associations. Nor should the short title of the Special Rapporteur be interpreted to mean that he will not concern himself with issues affecting the independence and impartiality of assessors. Similarly, the Special Rapporteur will be attentive to interferences with the independence and impartiality of jurors.

## I. CONSIDERATIONS ON THE MANDATE

### A. Introduction

15. The object of this chapter is to situate the mandate of the Special Rapporteur in the context of the considerable work which has been accomplished so far in elaborating international standards and seeking their full respect. To this end, the Special Rapporteur will briefly recount the historical antecedents of his mandate within the United Nations, describe the legal framework in which his work will be carried out, and identify some of the important questions of principle which he intends to address over the next two years. By doing so, the Special Rapporteur hopes that this report will provide continuity with the work which has come before and will contribute to the clarity and coherency of the work which he intends to carry out in fulfilment of his mandate.

### B. Historical background of the mandate

16. The independence and impartiality of judges, lawyers and other actors within the judicial branch of government are considered essential elements in safeguarding human rights. This understanding has been incorporated into various international instruments for the protection of human rights. However, some of the practical difficulties experienced throughout the world in relation to the need for measures and conditions regarded as essential to ensure and secure the independence and impartiality of the judiciary inspired the Sub-Commission on Prevention of Discrimination and Protection of Minorities to request, in its resolution 5 E (XXXI) of 13 September 1978, the Secretary-General to prepare a preliminary study on the matter and to report to the Sub-Commission at its thirty-second session in 1979. Taking into account earlier work of the Sub-Commission related to the administration of justice, the Secretary-General accordingly sought relevant information from the Governments of member States and compiled the replies received in his subsequent report of 11 July 1979 (E/CN.4/Sub.2/428).

17. Following its consideration in 1979 of the report of the Secretary-General, the Sub-Commission sought and received the authorization of the Economic and Social Council (decision 1980/124 of 2 May 1980) to entrust

Mr. L.M. Singhvi with the preparation of a report on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. Mr. Singhvi accordingly submitted a preliminary report on the subject in 1980 (E/CN.4/Sub.2/L.731) and progress reports in 1981 (E/CN.4/Sub.2/481 and Add.1), 1982 (E/CN.4/Sub.2/1982/23) and 1983 (E/CN.4/Sub.2/1983/16).

18. Based upon Mr. Singhvi's successive reports, the Sub-Commission adopted resolution 1984/11, in which it requested him to submit his final report to the Sub-Commission at its thirty-eighth session in 1985, and decided to consider it at that session with a view to the elaboration of a draft body of principles. This decision of the Sub-Commission, and the subsequent work of Mr. Singhvi, served as catalysts for activities by interested persons and non-governmental organizations throughout the world which reinforced and specifically contributed to the elaboration of a draft body of principles. In his final report (E/CN.4/Sub.2/1985/18 and Add.1-6), Mr. Singhvi submitted an initial draft declaration on the independence of justice (the "Singhvi draft declaration"). In addition to his own draft, Mr. Singhvi annexed to his report the Draft principles on the independence of the legal profession (formulated by a meeting of lawyers from throughout the world, held at Noto, Italy, from 10 to 14 May 1982, in which the Special Rapporteur had the honour to participate and contribute) and the Universal Declaration on the Independence of Justice (adopted by a meeting of eminent jurists in Montreal, Canada, on 10 June 1983).

19. Pursuant to Sub-Commission decision 1985/107, Mr. Singhvi's final report was circulated to the members of the Sub-Commission for their comments, upon which Mr. Singhvi was requested to report again to the Sub-Commission at its thirty-ninth session. A compilation of the comments made by members of the Sub-Commission is contained in document E/CN.4/Sub.2/1987/17.

20. Taking into consideration the comments he had received from members of the Sub-Commission and also from Member States (following circulation of the draft pursuant to Sub-Commission resolution 1987/23), Mr. Singhvi submitted a report reflecting these comments and suggestions on the draft declaration (E/CN.4/Sub.2/1988/20), together with a revised version of the draft declaration (E/CN.4/Sub.2/1988/20/Add.1 and Add.1/Corr.1), to the Sub-Commission at its fortieth session. By this time, the international community had already elaborated clear standards regarding specifically the judiciary: the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, meeting at Milan from 26 August to 6 September 1985, had adopted the Basic Principles on the Independence of the Judiciary (A/CONF.121/22, chap. I, sect. D.2), as endorsed by the United Nations General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. At the same time, Draft Basic Principles on the Role of Lawyers were being considered under the auspices of the United Nations on the basis of a working paper prepared by the secretariat of the United Nations Office at Vienna - apparently without reference to the draft declaration prepared by Mr. Singhvi (see E/CN.4/Sub.2/1988/20, para. 53). These closely related activities of the United Nations contributed to Mr. Singhvi's revised draft declaration.

21. In its resolution 1988/25, the Sub-Commission expressed its appreciation and thanks to the Special Rapporteur, Mr. Singhvi, for the enduring and valuable contribution he had made to the legal doctrine relating to the independence of justice, which was one of the primary prerequisites for the promotion and protection of human rights, and decided to refer the Singhvi draft declaration, under the title "Draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers", to the Commission on Human Rights for further consideration. It also decided to consider the draft declaration under a separate item of the agenda at its forty-first session.

22. The Commission on Human Rights, at its forty-fifth session, in resolution 1989/32, invited Governments to take into account the principles set forth in the Singhvi draft declaration in implementing the Basic Principles on the Independence of the Judiciary. The Commission also welcomed the decision of the Sub-Commission to consider an agenda item on the draft declaration at its forty-first session and requested the Sub-Commission, under the same agenda item, to consider effective means of monitoring the implementation of the Basic Principles on the Independence of the Judiciary and the protection of practising lawyers.

23. In its resolution 1989/22, the Sub-Commission, at its forty-first session, responded to the above request of the Commission by inviting Mr. Louis Joinet to prepare a working paper on means of monitoring implementation of the relevant standards. The Commission on Human Rights, in its resolution 1990/33, endorsed Sub-Commission resolution 1989/22 and recommended that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders consider as a matter of priority the draft basic principles on the role of lawyers elaborated by the Committee on Crime Prevention and Control, with a view to their adoption. Meeting at Havana from 27 August to 7 September 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders did in fact adopt the aforementioned principles, together with Guidelines on the Role of Prosecutors.

24. In accordance with his mandate, Mr. Joinet submitted a working paper to the Sub-Commission at its forty-second session (E/CN.4/Sub.2/1990/35) in which he recounted the then current United Nations standard-setting and reporting activities, categorized violations of international norms relative to judicial independence and impartiality and the independence of the legal profession, surveyed positive experiences in protecting the independence of judges and lawyers, and drew some conclusions. In the same working paper, Mr. Joinet recommended that the Sub-Commission request one of its members to prepare a report which would (a) make a system-wide analysis of the advisory service and technical assistance programmes of the United Nations as regards the subject and (b) bring to the attention of the Sub-Commission cases of legislative and practical measures serving to strengthen judicial independence and impartiality and the independence of the legal profession or, on the contrary, cases which constituted violations of these norms (E/CN.4/Sub.2/1990/35, para. 76).

25. After considering the working paper submitted by Mr. Joinet, the Sub-Commission decided, in its resolution 1990/23, to entrust Mr. Joinet with the preparation of such a report as he had recommended. That decision was endorsed by the Commission in its resolution 1991/39.

26. In the meantime, the standard-setting activities had continued in relation to the roles of lawyers and prosecutors: both the Basic Principles on the Role of Lawyers and Guidelines on the Role of Prosecutors were adopted at the Eighth United Nations Congress on the Prevention and Treatment of Offenders, held at Havana from 27 August to 7 September 1990; the two instruments were subsequently welcomed by the General Assembly in its resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990.

27. The following year, Mr. Joinet submitted a comprehensive report to the Sub-Commission at its forty-third session (E/CN.4/Sub.2/1991/30). In this report, Mr. Joinet surveyed the advisory services and technical assistance rendered by the United Nations in the field of human rights and other related fields; surveyed measures and practices which had strengthened, or to the contrary weakened, the safeguards of independence and protection; drew conclusions and made practical recommendations. While comprehensive in the matters addressed, the report was not, Mr. Joinet admitted, exhaustive. In relation to measures and practices which had served to strengthen or weaken the independence of the judiciary and the protection of lawyers, he had "intended merely to illustrate, from the standpoint of method, what a report on the subject might cover in relation to the international standards" (E/CN.4/Sub.2/1991/30, para. 301). In fact, in his report Mr. Joinet had given priority to the matter of advisory services and technical assistance and addressed only "the major obstacles - especially physical pressure", partly because "the information received or collected ... [was] too abundant to be dealt with in a single report" (para. 302). Consequently, Mr. Joinet made detailed recommendations with respect to advisory services and technical assistance, but, with regard to measures and practices which had served to strengthen or weaken the independence of the judiciary and the protection of lawyers, he recommended renewal of that part of his mandate to enable him to provide the Sub-Commission with the fullest possible information (para. 312).

28. In resolution 1991/35 of 29 August 1991, the Sub-Commission decided to entrust Mr. Joinet with the preparation of another report to bring to its attention information on practices and measures which had served to strengthen or to weaken the independence of the judiciary and the legal profession in accordance with United Nations standards. In its resolution 1992/33, the Commission on Human Rights endorsed the Sub-Commission's decision.

29. At its forty-fourth session, the Sub-Commission considered the further report of Mr. Joinet (E/CN.4/Sub.2/1992/25 and Add.1), in which he reported upon positive measures and practices aimed at strengthening the safeguards of independence and protection and cited cases of measures and practices which had served to weaken these safeguards. He divided those cases into those measures and practices which had: constituted "pressure" on judges and lawyers; been implemented during states of emergency and in the administration of military justice; weakened the application of statutory safeguards and the tenure of judges; weakened the application of the safeguards relating to

access to the assistance of a lawyer or to the practice of the profession; and weakened the application of the safeguards relating to the freedoms of association and expression of lawyers. After considering his report, the Sub-Commission decided, in resolution 1992/38 of 28 August 1992, to entrust Mr. Joinet with the preparation of a final report which, in addition to bringing to the attention of the Sub-Commission further information on practices and measures which had served to strengthen or to weaken the independence of the judiciary and the protection of practising lawyers in accordance with United Nations standards, would enable him: to make specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the United Nations advisory services and technical assistance programmes (following upon his earlier recommendations); to examine ways of enhancing cooperation and avoiding overlapping and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Sub-Commission; and to elaborate upon the recommendations made in his 1992 report. Sub-Commission resolution 1992/38 was subsequently endorsed by the Commission on Human Rights at its forty-ninth session in resolution 1993/44 of 5 March 1993.

30. In his final report to the Sub-Commission (E/CN.4/Sub.2/1993/25), in which he reported on what he termed "positive and negative measures and practices concerning guarantees of independence, impartiality and protection", Mr. Joinet provided: an update on the relevant activities under the United Nations programme of advisory services and technical assistance; a summary of the development of standards at both the universal and regional levels; and an update of his survey of positive and negative measures and practices by Governments within their own domestic jurisdiction. In relation to "negative measures and practices", Mr. Joinet addressed both de facto violations and violations in the operation of the law, under the following headings: "violence, physical threats and harassment"; "actions undermining the courts' need for objective and impartial information"; "declaration of states of emergency or establishment of courts of special jurisdiction"; "encroachments on professional or jurisdictional status"; and "violations of fundamental freedoms". Mr. Joinet concluded his report with suggestions for the reinforcement of cooperation between the United Nations human rights programme and the United Nations crime prevention and criminal justice programme and a recommendation for the establishment of a monitoring mechanism. Specifically, he recommended the creation of a special procedure capable of: examining what he characterized as "the still too numerous violations perpetrated today, only the most symptomatic of which have been described in the present report" (E/CN.4/Sub.2/1993/25, chap. II, para. 10); "eliciting the cooperation of Governments" (E/CN.4/Sub.2/1993/25, chap. II, para. 11) with a view to addressing relevant questions or situations; remedying "the insufficient involvement of judges' and lawyers' professional organizations in a question which is nevertheless of direct concern to them" (ibid.) - and for the broader interests of society at large, the Special Rapporteur would add; and "prospecting for new work areas whose importance and urgency, already considerable, will probably attain priority status: justice and the media, justice and reasons of state, justice and emergency situations, justice and anti-terrorism measures, etc." (ibid.).

31. On the basis of the various studies and reports prepared under Sub-Commission mandates during more than a decade, and taking into consideration especially the final report of Mr. Joinet (E/CN.4/Sub.2/1993/25 and Add.1), the Sub-Commission recommended, in its resolution 1993/39 of 26 August 1993, the creation of "a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers, and the nature of problems liable to attack this independence and impartiality". The Commission on Human Rights, in its resolution 1994/41 of 4 March 1994, endorsed the recommendation of the Sub-Commission, and thereupon requested the Chairman of the Commission to appoint a special rapporteur. The substance of Commission resolution 1994/41, as approved by Economic and Social Council decision 1994/251, is recounted in paragraphs 1 to 3 above.

## C. The legal framework

32. The Special Rapporteur observes that the requirements of independent and impartial justice are universal and are rooted in both natural and positive law. At the international level, the sources of this law are to be found in conventional undertakings, customary obligations and general principles of law.

33. The Special Rapporteur will not here embark upon a treatise intended to establish the basis and content of applicable law. Indeed, in each case, the specific combination of applicable standards will be a function of the conventional obligations binding upon the concerned state in conjunction with the equally binding customary obligations and general principles of law. However, in this section of his report, the Special Rapporteur wishes to clarify the rudimentary elements he will refer to in assessing compliance by a State with its obligations.

34. In relation to the underlying concepts of judicial independence and impartiality, which the Special Rapporteur asserts are "general principles of law recognized by civilized nations" in the sense of Article 38 (1) (c) of the Statute of the International Court of Justice, the Special Rapporteur can do no better than to quote the following passages of Mr. Singhvi's lucid final report to the Sub-Commission in 1985 (E/CN.4/Sub.2/1985/18 and Add.1-6):

> "75. Historical analysis and contemporary profiles of the judicial functions and the machinery of justice shows the worldwide recognition of the distinctive role of the judiciary. The principles of impartiality and independence are the hallmarks of the rationale and the legitimacy of the judicial function in every State. The concepts of the impartiality and independence of the judiciary postulate individual attributes as well as institutional conditions. These are not mere vague nebulous ideas but fairly precise concepts in municipal and international law. Their absence leads to a denial of justice and makes the credibility of the judicial process dubious. It needs to be stressed that impartiality and independence of the judiciary is more a human right of the consumers of justice than a privilege of the judiciary for its own sake.

> "76. Judges must be impartial and independent and free from any restrictions, inducements, pressures, threats or interference, direct or indirect, and they should have the qualities of conscientiousness, equipoise, courage, objectivity, understanding, humanity and learning, because those are the prerequisites of a fair trial and credible and reliable adjudication ..."
>
> "79. The concept of impartiality is in a sense distinct from the concept of independence. Impartiality implies freedom from bias, prejudice and partisanship; it means not favouring one more than another; it connotes objectivity and an absence of affection or ill-will. To be impartial as a judge is to hold the scales even and to adjudicate without fear or favour in order to do right ..."
>
> "81. ... The duties of a juror and an assessor and those of a lawyer are quite different but their independence equally implies freedom from interference by the Executive or Legislative or even by the judiciary as well as by others in the fearless and conscientious discharge of their duties in the exercise of their functions ... Jurors and assessors, like judges, are required to be impartial as well as independent. A lawyer, however, is not expected to be impartial in the manner of a judge, juror or assessor, but he has to be free from external pressures and interference. His duty is to represent his clients and their cases, and to defend their rights and legitimate interests, and in the performance of that duty, he has to be independent in order that litigants may have trust and confidence in lawyers representing them and lawyers as a class may have the capacity to withstand pressure and interference."

35. Mr. Singhvi went on in his report to demonstrate that the principles of judicial independence and impartiality are reflected in the legal systems of the world by constitutional and legislative means supported by an overwhelming practice. As such, Mr. Singhvi was moved to observe that "there is in fact a coherent world profile of judicial independence and it is not merely a matter of ritual verbiage" (E/CN.4/Sub.2/1985/18/Add.1, para. 104). The Special Rapporteur fully shares the observation of Mr. Singhvi. Moreover, the Special Rapporteur is of the opinion that the general practice of providing independent and impartial justice is accepted by States as a matter of law and constitutes, therefore, an international custom in the sense of Article 38 (1) (b) of the Statute of the International Court of Justice.

36. While the basic obligations and their essential elements may be rooted in international custom and the general principles of law recognized by civilized nations, the specificities of these obligations have become the subject of some articulation in various international instruments at both the universal and regional levels. Although the Special Rapporteur has no authority to supervise compliance by States with obligations arising at the regional level, he observes that several of these instruments reiterate and reinforce universal obligations. At the universal level, the Special Rapporteur draws particular attention to the provisions of the 1948 Universal Declaration of Human Rights, the 1985 Basic Principles on the Independence of the Judiciary, the 1990 Basic Principles on the Role of Lawyers, and the 1990 Guidelines on

the Role of Prosecutors. It is to be noted in regard to the aforementioned instruments that their texts were elaborated by United Nations bodies and received full endorsement by the General Assembly.

37. With regard to conventional obligations, the Special Rapporteur draws attention first and foremost to the obligations emanating from the Charter of the United Nations. Specifically, the Charter refers in its Preamble, in Article 1 (3) and Article 55 (c), to the imperatives of universal respect for human rights. The Preamble also declares the determination "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". The Special Rapporteur observes in this relation that the overall conception of "justice" embodied in the Charter and the work of the United Nations incorporates respect for human rights and is conditioned on judicial independence and impartiality as such and for the safeguard of other human rights.

38. The Special Rapporteur observes that the further specification of the conventional obligations of the Charter entailed the elaboration of the Universal Declaration of Human Rights and subsequent instruments for the international protection of human rights. As such, at least those articles of the Universal Declaration of Human Rights which are intrinsic to respect for human rights in general may be said to proceed from the conventional undertaking of States Members of the United Nations as embodied in the Charter. The Special Rapporteur holds this to be true of articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights, which provide as follows:

"Article 7

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

"Article 8

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

"Article 10

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

"Article 11

"1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

"2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

39. The Special Rapporteur observes that whereas the requirements of independent and impartial justice are explicit in article 10 of the Universal Declaration, they are clearly implied in articles 7, 8 and 11. The Special Rapporteur also observes that this understanding has been upheld and repeated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the General Assembly by way of consistent preambular references in virtually every resolution adopted by these bodies on the subject in question.

40. Turning to more specific conventional obligations, the Special Rapporteur refers to articles 2, 14 and 26 of the 1966 International Covenant on Civil and Political Rights, which provide as follows:

"Article 2

"1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

"2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

"3. Each State Party to the present Covenant undertakes:

"(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

"(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

"(c) To ensure that the competent authorities shall enforce such remedies when granted."

"Article 14

"1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

"2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

"3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

"(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

"(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

"(c) To be tried without undue delay;

"(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

"(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

"(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

"(g) Not to be compelled to testify against himself or to confess guilt.

"4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

"5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

"6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

"7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

"Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

41. The Special Rapporteur observes that whereas the requirements of independent and impartial justice are explicit in article 14 quoted above, they are clearly implied in articles 2 and 26. The Special Rapporteur also observes that this understanding has been upheld and repeated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the General Assembly by way of consistent preambular references in virtually every resolution adopted by these bodies on the subject in question.

42. The Special Rapporteur observes that the requirements of an independent and impartial judiciary, and independent lawyers, which are necessary for the implementation of articles 2, 14 and 26 of the International Covenant on Civil and Political Rights, are also necessary for the effective realization and enjoyment of most other rights and freedoms, especially with regard to those provisions which proscribe arbitrary acts and those provisions which prescribe judicial supervision. Articles 6.1, 6.2 and 9 of the Covenant are particularly relevant in this relation:

"Article 6

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

"2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not

contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

"Article 9

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

"2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

"3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

"4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

"5. Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation."

43. In interpreting the full implications of the provisions of the International Covenant on Civil and Political Rights (and those of the Universal Declaration of Human Rights) requiring or relating to judicial supervision, Mr. Singhvi observed that, in the elaboration of the instruments, "the concepts of independence and impartiality were not analysed or elucidated. These broad concepts were taken to be axiomatic and did not engender any controversy" (E/CN.4/Sub.2/1985/18, para. 28).

44. With respect to more specific interpretation, the Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights, and acting pursuant to article 40.4, stated in its General Comment 13 of 1984 that the notion of "a competent, independent and impartial tribunal established by law", as stipulated in article 14.1 of the Covenant, raises matters regarding "the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the judiciary from the executive branch and the legislative" (HRI/GEN/1, General Comment 13, para. 3).

45. In the elaboration of its own jurisprudence, the Human Rights Committee, as expressed through its views upon individual communications received

pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights, has stated in relation to article 14.1 that "the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception" (Communication No. 263/1987, González del Río v. Peru, Decision of 20 November 1992, CCPR/C/46/D/263/1987, para. 5.2). More specifically, the Human Rights Committee has stated:

> "'Impartiality' of the court implies that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties. Where the grounds for disqualification of a judge are laid down by law, it is incumbent upon the court to consider ex officio these grounds and to replace members of the court falling under the disqualification criteria. A trial flawed by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be fair or impartial within the meaning of article 14." (Communication No. 387/1989, Karttunen v. Finland, Decision of 17 November 1992, CCPR/C/46/D/387/1989, para. 7.2)

46. Turning to other conventional obligations in the field of human rights which require judicial independence and impartiality, the Special Rapporteur refers to: articles 5.a and 6 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; articles 2 (c), 15.1 and 15.2 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women; article 2.1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and articles 9.1 and 12.2 of the 1989 Convention on the Rights of the Child. The Special Rapporteur considers that the requirements of independent and impartial justice are implicit in, and are in fact or very closely related to the purpose of, the aforementioned provisions, which read as follows:

"International Convention on the Elimination of All Forms of Racial Discrimination

"Article 5

"...

"(a) The right to equal treatment before the tribunals and all other organs administering justice;

"..."

"Article 6

"States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination."

"Convention on the Elimination of All Forms of Discrimination against Women

"Article 2

"...

"(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;"

"Article 15

"1. States Parties shall accord to women equality with men before the law.

"2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals."

"Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

"Article 2

"1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

"Convention on the Rights of the Child

"Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. ..."

"Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

"2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

47. Although the supervisory bodies established under the above-mentioned Conventions have not so far chosen to pronounce themselves, through such general recommendations as they are entitled to issue, on the implicit requirements of judicial independence and impartiality, the Special Rapporteur observes that at least the jurisprudence of the Committee on the Elimination of Racial Discrimination has confirmed the requirement of impartiality with respect to article 5 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (see Communication No. 3/1991, Narrainen v. Norway, Opinion of 24 March 1994, CERD/C/44/D/3/1991, paras. 9.1-10). The Special Rapporteur believes that any contest of the other above-cited provisions would result in similar authoritative views or opinions.

48. Of similar importance to the conventional obligations in the foundational human rights instruments referred to above are article 16 of the 1951 Convention relating to the Status of Refugees and article 16 of the 1954 Convention relating to the Status of Stateless Persons, which provide as follows:

"Convention relating to the Status of Refugees

"Article 16. - Access to courts

"1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

"2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.

"3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence."

"Convention relating to the Status of Stateless Persons

"Article 16. - Access to courts

"1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.

"2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi.

"3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence."

49. The Special Rapporteur observes that the references to "courts" in article 16 of the Convention relating to the Status of Refugees, imply the conditions of independence and impartiality. Indeed, so far as the Special Rapporteur has been able to determine, this implication appears to have been so self-evident as to have never inspired discussion in the drafting process, interpretative notes or circulars of the Division of International Protection of the Office of the United Nations High Commissioner for Refugees (UNHCR), authoritative statements by the Executive Committee of UNHCR or any other similar body, or even analyses in any subsequent academic commentaries on the Convention. The same absence of controversy or even concern appears to have characterized the drafting, analysis, implementation and academic treatment of article 16 of the Convention relating to the Status of Stateless Persons. The apparent absence of doubt most probably is attributable to the logic underlying the provisions - that the person for whom protection is aimed should have recourse to an instance which is not subject to executive or legislative dictates or interests and which is also free from bias, i.e. that the instance be independent and impartial. If this were not so, the Special Rapporteur submits that the provisions would lose their reason for being.

50. Returning to the provisions of the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, and the Guidelines on the Role of Prosecutors to which the Special Rapporteur has referred above and to which he attaches special importance as the most precise articulations of the standards relating to judicial independence and impartiality and to the independence of the legal profession, it is to be understood that these instruments will constitute the main references in implementation of the present mandate.

51. While the legal framework of the Special Rapporteur's mandate may be said to be a composite of various obligations arising over the years from the different sources of international law, the Special Rapporteur also attaches considerable importance to Part I, paragraph 27 of the Vienna Declaration and Programme of Action (A/CONF.157/23), unanimously adopted on 25 June 1993 by the World Conference on Human Rights, which brings together the matter in a concise fashion, declaring, in part, as follows:

"Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development ..."

52. Despite the quite developed legal content of the notions of judicial independence and impartiality, and also the broader notion of an independent legal profession, some lacunae remain on the margin of these concepts in

international law. This fact explains the existence of the third part of the Special Rapporteur's mandate, which relates to questions of principle requiring clarification, if not further elaboration and possible standard-setting.

D. Some issues of special importance

53. As noted above, the Special Rapporteur is mandated "to study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers" (Commission resolution 1994/41, para. 3 (c)).

54. In studying the work of the Sub-Commission which preceded the creation of his mandate, the Special Rapporteur observes that several questions of principle have already been raised, particularly by Mr. Joinet in his reports. Specifically, Mr. Joinet suggested that the following issues might be given priority status under a monitoring mechanism such as has now been established: justice and the media, justice and reasons of State, justice and emergency situations, justice and anti-terrorism measures (E/CN.4/Sub.2/1993/25, chap. II, para. 11).

55. In fact, as the Special Rapporteur has already indicated, some issues require clarification only. For example, clarification (or perhaps, more accurately, reiteration) may be necessary in relation to the principle of the separation of powers, which is the bedrock upon which the requirements of judicial independence and impartiality are founded. Understanding of, and respect for, the principle of the separation of powers is a sine qua non for a democratic State and is, therefore, of cardinal importance for countries in transition to democracy - which heretofore have been typically characterized by precisely the absence of a separation of powers. Thus, the Special Rapporteur will emphasize the special and urgent necessity for respecting the principle of separation of powers and the requirements of judicial independence and impartiality, especially in countries in transition to democracy. He is confident that, in doing so, the valuable contribution made by independent and impartial justice to national development will also become apparent.

56. Another case where clarification may be necessary is with regard to the function of judicial review, or its equivalent, of the constitutionality or legality of executive decisions, administrative orders and legislative acts. Early in the implementation of his mandate, the Special Rapporteur has already observed a considerable misunderstanding on the part of governmental authorities and even parliamentarians. The misconception seems to be that judicial review is a matter of substituting the opinions of judges for the determinations or acts of the competent authorities within or under the executive or legislative branches of government. The often heard argument is: "How could judges, who are merely appointed, set aside the decisions of the elected representatives of the people and substitute their own decisions?" This misunderstanding tends also to cause the executive or legislative branches to seek to limit, or even suspend, the power of judicial review, i.e. to interfere with judicial independence. Of course, the function of judicial review serves only to ensure that the executive and legislative branches carry out their responsibilities according to law, and that their determinations or

acts do not exceed their accorded powers. The process of judicial review serves to check executive and legislative excesses by upholding the rule of law; it is in no sense a matter of substitution. However, because of the seemingly widespread misunderstanding of the power of judicial review (which is so vital for the protection of the rule of law), the Special Rapporteur will devote some effort to addressing the problem, especially in the context of countries undergoing transition to democracy.

57. Aside from those issues which may require some clarification, it is evident that some standards will have to be further elaborated in terms of the specificities of their application in certain contexts or situations, while other questions of principle will require the elaboration of entirely new standards in order to fill existing gaps. In relation to the former, it is to be observed that the criterion of "independence" is not always assured with respect to military courts, revolutionary tribunals, or similar special courts. In these cases, the extent of the criterion of independence is at issue and requires a clear and sufficient response in terms of application of existing standards.

58. The complexities of the modern State, together with genuine threats which manifest themselves indiscriminately against whole societies, raise questions of principle which may well require additional standards in relation to judicial independence and impartiality and to the independence of the legal profession. However, arguments invoked by the executive to restrict judicial independence on the basis of "reasons of State" (for example, national security) must be carefully scrutinized and clear limits to the restrictions must be established. The Special Rapporteur is confident that creative solutions can be found which would overcome problems of, for example, sensitive documentation which the executive might seek to withhold from the judiciary. In order to avoid what Mr. Joinet has seen to be an "excessive usage of the prerogatives conferred on governmental authorities" (E/CN.4/Sub.2/1993/25, para. 116), examination of the problem will have to be initiated.

59. Another question of considerable concern to the Special Rapporteur arises in relation to states of emergency. One commentator has observed concisely that "the emasculation of the judiciary and the harassment of defence lawyers are not uncommon in a state of emergency" (Chowdhury, Subrata Roy, Rule of Law in a State of Emergency, Pinter Publishers, London, 1989, p. 130). Indeed, decrees instituting states of emergency are often followed by mass dismissals of judges, the creation of special courts and the restriction or suspension of the judicial review function. Concern over such matters has been expressed over the years by many organizations and in many forums, for example, by the International Commission of Jurists and its Centre on the Independence of Judges and Lawyers, the International Law Association and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and there is no doubt that the matter remains in need of resolution. In this connection, the Special Rapporteur takes note of paragraph 9 of the "Guidelines for the Development of Legislation on States of Emergency" (entitled "Effects of a state of emergency on the judiciary", and which seeks to protect, inter alia, the critical function of judicial review) annexed to the fourth annual report

and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, submitted to the Sub-Commission by Mr. Leandro Despouy, Special Rapporteur appointed pursuant to Economic and Social Council resolution 1985/37 (E/CN.4/Sub.2/1991/28).

60. The scourge of terrorism has also given rise to anti-terrorism measures which often present problems for judicial independence or the independence of the legal profession. As in the case of states of emergency, one feature of anti-terrorism measures has been the creation of special courts. In some countries, procedural requirements of the measures constitute clear interferences with the lawyer-client relationship, for example, interferences with confidentiality. Other measures, such as the increasingly broadly applied technique of hooding judges in order to protect them from reprisals, raise larger questions of due process which may have some bearing on the notions of judicial independence and impartiality. Some standard-setting may be required in this area.

61. Another source of increasing concern is the relationship between the media and the judiciary. In this era of rapidly developing communications technologies, it has become difficult at times to balance the equally important freedom of expression (and the corresponding right to information) on the one hand with the requirements of fair trial (featuring an independent and impartial judiciary) on the other hand. Certainly, judges (and/or jurors) must be protected against pressures which would implant or effect bias, or even cause the appearance of such bias, to the detriment of the rule of law in a specific case or in general. At the same time, one must be extremely careful not to restrict unnecessarily the freedom of expression. The question must be examined, a fine balance between these two competing, equally important, rights must be sought, and additional standards of protection may have to be developed in this connection.

62. In referring to the above issues, the Special Rapporteur has sought only to identify some questions of principle to which he attaches special importance. With the cooperation of interested Governments, intergovernmental organizations, non-governmental organizations and individuals, the Special Rapporteur hopes to be able to contribute constructively to the further elaboration of appropriate standards of judicial independence and impartiality and of the independence of the legal profession.

## II. METHODS OF WORK

### A. Introduction

63. In reviewing the work which has led up to the creation of his mandate, and as a result of his own early experience, the Special Rapporteur wishes to make the preliminary observation that his mandate applies to a wide spectrum of court officers, as its long title indicates. Accordingly, the Special Rapporteur will address issues affecting the officers of the court concerned under his mandate. However, the Special Rapporteur also takes note of the experience of Mr. Joinet which led him to observe that, in relation to the broader legal profession, "it seems that the judiciary and lawyers are the

only professions to run serious risks" (E/CN.4/Sub.2/1992/25/Add.1, para. 6 (2)(e)). As a practical consequence, this means that the Special Rapporteur will address matters affecting principally judges and lawyers, whatever their official role in the judicial branch of government.

64. With regard to definitions, the Special Rapporteur will address himself to all cases, situations and matters involving performance of the functions of judges (whether in the superior or the subordinate courts, or in special tribunals created by statutes), jurors, assessors and lawyers, whether the persons involved are professional or lay, whether their functions or appointments are of regular standing or ad hoc, and irrespective of their formal qualifications or recognition.

65. In devising methods of work for implementing his mandate, the Special Rapporteur is conscious of the fact that his mandate was created in response to concrete and practical problems. In many countries, judges and lawyers suffer reprisals for performing their professional functions. Interferences range from professional sanctions and dismissals through arbitrary arrests and detentions to physical attacks including killings and disappearances. In addition to interferences with individual judges or lawyers, there have been many incidents where the executive or legislative branches have suspended certain functions of the judicial branch, or in some cases legislated them out of existence, i.e. there have been interferences with the structures and institutions which administer justice, including bar associations. The Special Rapporteur finds that the independence and impartiality of the judiciary can be effectively secured if there is in the State a well-entrenched independent mechanism, independent of the executive and legislative arms of government, responsible for the appointment, promotion, transfer, and dismissal of judges (as noted in Human Rights Committee General Comment 13). In addition, financial independence from the executive and legislative arms of government is vital for an independent and impartial system of justice. Consequently, the Special Rapporteur will inquire into the availability of such mechanisms in States Members of the United Nations.

66. The purpose of the present chapter is to outline how the Special Rapporteur intends to implement each aspect of his mandate in a practical way. The essential work of the mandate has been articulated in paragraph 3 of Commission resolution 1994/41. Implementation of the mandated tasks requires: (i) fair and reliable methods of investigation into allegations; (ii) reliable methods of assessing progress achieved in protecting and enhancing the independence of the judiciary, together with reliable methods of assessing specific needs in order to make appropriate and concrete recommendations leading to real improvements; and (iii) methods of identifying and examining matters of principle concerning the independence and impartiality of the judiciary and the independence of the legal profession.

67. As a general rule, the Special Rapporteur will make himself available on the widest basis to the greatest extent of his abilities. He will seek to establish, and has already taken steps in this direction, direct contacts with Governments, relevant domestic authorities, intergovernmental organizations, relevant professional organizations and institutions, other interested international and national non-governmental organizations, academic institutions and individuals.

68. As a second general rule, the Special Rapporteur's approach will emphasize the prevention of violations. Hence, the Special Rapporteur will encourage dissemination of the relevant standards and will respond promptly upon being informed of possible threats to judicial independence and the independence of the legal profession.

69. In relation to other thematic mechanisms, the Special Rapporteur wishes to express his intention to cooperate fully, for example through regular consultations, joint studies and joint missions when appropriate, as recommended in the Joint Declaration of the Independent Experts Responsible for the Special Procedures for the Protection of Human Rights (A/CONF.157/9) and in the report on the meeting of independent experts responsible for the special procedures held at Geneva from 30 May to 1 June 1994 (E/CN.4/1995/5).

B. Concerning alleged violations

70. Paragraph 3 (a) of Commission resolution 1994/41 establishes a mandate which is consistent with the other special thematic procedures. Hence, in his methodology the Special Rapporteur will draw upon the experience acquired by the various thematic mechanisms and will largely follow the established common practice. In particular, he takes note of the methods of work used by the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7, paras. 13-67) and the Special Rapporteur on torture (E/CN.4/1994/31, paras. 5-23).

71. The Special Rapporteur's mandate encompasses a broad range of issues relating to the protection of the independence of the judiciary and the legal profession. Since interferences with judicial independence may be directed against both individuals and the institutions or branch as such, the Special Rapporteur will have to consider general situations as well as concrete incidents and individual cases.

72. In relation to the legal profession, the Special Rapporteur is conscious of the fact that the role of lawyers and their respective bar associations in upholding human rights and fundamental freedoms, as referred to in paragraph 14 of the Basic Principles on the Role of Lawyers, is sometimes seen by Governments as lawyers dabbling in politics. The Special Rapporteur will be vigilant in the protection of this important role of lawyers in upholding these rights and freedoms and will seek to bring offending Governments to account; the Special Rapporteur is aware of instances where lawyers have been arbitrarily detained without trial and of some cases in which their law practices have been subjected to economic sanctions. However, the Special Rapporteur will be equally vigilant in scrutinizing situations where lawyers may be using their bar associations to indulge in partisan politics, thus compromising the independence of the legal profession. In this connection, the Special Rapporteur will seek to distinguish between engagement in the protection of those human rights which have political connotations, and engagement in politics per se.

73. In all cases, direct contacts with the alleged victims and/or their representatives will be sought. Corroborative or supplementary information will also be sought from sources other than the alleged victims or their representatives.

74. Where the information received by the Special Rapporteur is prima facie credible, the Special Rapporteur will transmit the allegation, usually by letter, to the concerned Government in order to obtain the Government's response.

75. The credibility of the source of the allegations will be established by the Special Rapporteur by reference to: the degree of detail presented by the alleged victim about him or herself and the event or interference alleged; corroborative sources; logic; the laws in force in the concerned State.

76. In rare cases of particularly grave allegations of violations, for example, threats to the life of the alleged victim, the Special Rapporteur will send an urgent appeal to the concerned Government. This method will follow the procedures established for other thematic mechanisms.

77. Whether addressed through a letter or through a cable issued as an urgent appeal, the Government concerned will be expected to respond expeditiously to the Special Rapporteur's request for information or explanation. In this regard, the Special Rapporteur draws attention to Commission resolution 1993/47, in which Governments are encouraged to so respond.

78. Paying due account to the need to have reliable information prior to seeking responses from concerned Governments, the Special Rapporteur will seek to act in the preventive spirit with which he will approach his mandate overall. By doing so, the Special Rapporteur would hope to avoid more serious interferences or attacks. For example, should the Special Rapporteur observe movement in some part of the world directed towards restriction of judicial independence or the independence of the legal profession, for example, consideration of legislation, he will endeavour immediately to inform decision-makers of the relevant international standards. Such endeavours may well require direct intervention at the local level in order to draw the attention of the relevant authorities to the specific standards prior to legislation being adopted or other violations occurring.

79. In such situations as may require, the Special Rapporteur will undertake on-site visits to enhance his understanding of particular situations and to facilitate personal contacts with the relevant parties, especially governmental authorities.

80. Where responses received from Governments are considered unsatisfactory by the Special Rapporteur, he will seek additional information from the source/victim and the Government. Still unsatisfactory governmental responses will be mentioned in the subsequent reports of the Special Rapporteur to the Commission on Human Rights. The cases/situations will also continue to be followed by the Special Rapporteur until such time as a satisfactory response is received. Satisfactory governmental replies will be deemed to have "clarified" allegations and such cases will not normally figure in the Special Rapporteur's reports.

81. Concerning the notion of a "satisfactory" response from a concerned Government, the Special Rapporteur wishes to make clear that responses must demonstrate respect for independence of the judiciary and the legal profession

in practice. The Special Rapporteur will not be satisfied with mere statements of principle extracted from the Constitution of the State concerned, but will seek further information on how in practice those principles are applied to secure judicial independence and impartiality and the independence of the legal profession.

82. In adopting the above-described methods in cases or situations arising under the terms of paragraph 3 (a) of Commission resolution 1994/41, the Special Rapporteur takes note of the fact that Mr. Joinet experienced and described the difficulties of endeavouring to consider allegations and government responses thereto through the normal procedures, in so far as translation and transmission of information and general communication between the sources, the Special Rapporteur, the Centre for Human Rights and the responsible Government are very time-consuming. The Special Rapporteur sincerely hopes that such difficulties can be overcome.

C. Concerning progress achieved and concrete recommendations

83. It is the obvious aim of international human rights law that standards be implemented at the domestic level. However, such implementation requires, in the first place, full knowledge of the existing standards on as wide a scale as possible. In this connection, the Special Rapporteur's initial experience supports Mr. Joinet's earlier finding that "non-governmental organizations, particularly professional organizations of jurists, are insufficiently well informed of the specific system of standards for the protection of the judiciary and lawyers" (E/CN.4/Sub.2/1992/25/Add.1, para. 6 (4) (b)). Consequently, significant promotional activities will be necessary to spur progress in implementation of the standards.

84. The promotion of respect for the independence and impartiality of the judiciary will be served by the Special Rapporteur's reporting on progress achieved throughout the world. Not only will positive steps be brought to light, but specific methods of implementation will no doubt provide the opportunity to learn: progress achieved in one part of the world may be useful in overcoming problems elsewhere in the world.

85. Progress will be evident not so much from the apparent absence of interferences and attacks as from positive measures of protection which engender a healthy and vigorous judiciary and legal profession confidently performing their functions. Legislative progress will be necessary in many parts of the world in order to overcome existing structural deficiencies. However, such legislative progress may be dependent upon success in promotional activities, as mentioned above. For example, before parliamentarians may be prepared to act to secure judicial independence and the independence of the legal profession through statutory measures, unjustified fears that an independent judiciary may usurp executive or legislative powers will have to be overcome.

86. In connection with the above, the Special Rapporteur is especially aware of the importance of encouraging and aiding countries in transition to democracy in order to establish a system that will provide a proper balance between the various authorities concerned with the administration of justice. At this moment of global change, the Special Rapporteur is convinced that the

most immediate and critical need for advisory services and technical assistance in the field of the administration of justice in general, and with regard to judicial independence and the independence of the legal profession in particular, is among countries in transition to democracy. Consequently, the Special Rapporteur will seek dialogue with the authorities of such States with a view to identifying specific needs and encouraging the provision of appropriate services and assistance.

87. The Special Rapporteur will also strongly encourage regional cooperation in order to strengthen the independence of the judiciary. In this connection, the Special Rapporteur welcomes several initiatives around the world. For example, the Special Rapporteur applauds the work being done in the countries of the former Soviet Union by European intergovernmental organizations such as the Council of Europe and the Organization of Security and Cooperation in Europe's Office of Democratic Institutions and Human Rights. Initiatives aimed at regional standard-setting, such as the draft additional protocol to the European Convention on Human Rights prepared by the Association of European Magistrates for Democracy and Freedoms and the Draft General Principles on the Independence of the Judiciary prepared by the association of Asian Chief Justices, are also to be applauded in so far as they are consistent with, or add to, universal standards. Certainly, it is to be acknowledged that initiatives by respected non-governmental organizations, such as the Geneva-based International Commission of Jurists' Centre for the Independence of Judges and Lawyers and the New York-based Lawyers Committee for Human Rights, have contributed greatly through their detailed reporting to the development of specific standards and methods of implementation aimed at securing the independence of judges and lawyers. In relation to such initiatives, the Special Rapporteur will, in addition to reporting upon them, seek to act as a catalyst and facilitator where his involvement may be considered welcome and constructive.

88. Returning to problems of structural deficiency, they will be examined initially through scrutiny of laws. More in-depth examination would require country visits for needs assessment. The Special Rapporteur would be available to undertake such visits at the request of Governments, but he may also approach Governments in that regard where he may think it would be of use. The Special Rapporteur may occasionally issue "country profiles" which would both reveal problem areas and identify governmental efforts which required support and encouragement. Involvement with multilateral institutions such as the World Bank may also be pursued, especially to encourage funding of infrastructural needs associated with the "capital costs" of the administration of justice under an independent and impartial judiciary.

89. Evidently, the effective implementation of paragraph 3 (b) of Commission resolution 1994/41, with special attention to its constructive emphasis, will require close cooperation with the advisory services and technical assistance programme of the Centre for Human Rights. To this end, the Special Rapporteur will pursue the establishment of a regular exchange of information and views with the Centre for Human Rights on matters concerning judicial independence and the independence of the legal profession.

90. Over the long run, increased awareness of the standards is the key to progress. It is partly with this in mind that the Special Rapporteur has

contacted not only the relevant professional associations, whose membership consists of those most immediately interested and affected, but also law schools and faculties, with a view to informing and acculturating future lawyers, judges and, frequently, political leaders. In relation to the latter group, the Special Rapporteur intends to follow up his initial contacts with a recommendation concerning the development of a specific programme for law schools.

### D. Concerning questions of principle

91. With regard to that part of the mandate articulated in paragraph 3 (c) of Commission resolution 1994/41, i.e. questions of principle, Messrs. Joinet and Singhvi have already singled out some subjects to be taken up and the Special Rapporteur has already commented briefly upon some of these and others. It may well be that, in the course of his examination of various cases and situations around the world, other questions will arise. The Special Rapporteur will endeavour to analyse systematically such questions in his reports.

92. In addition to his own analyses, the Special Rapporteur may wish to solicit the views of Governments, specialized or interested organizations and independent experts. Wide consultation may take the form of participation in, or even the hosting of, occasional seminars and conferences. In general, the Special Rapporteur will stimulate discussion with a view to distilling consensus on possible standards.

93. In the process of conducting his studies, the Special Rapporteur may very well seek partners from the governmental, intergovernmental and non-governmental communities.

## III. RESOURCE REQUIREMENTS

94. It should go without saying that the effective implementation of the Special Rapporteur's mandate depends upon the availability of adequate human and material resources. There is a direct causal link in this regard: adequate funding facilitates effective implementation, while inadequate funding will result in ineffective implementation. It is also to be observed that the availability of resources has a significant bearing on a second causal relationship: the achievement of an independent and impartial judiciary affects significantly the level of respect for human rights in general - as recognized by the Commission in the seventh preambular paragraph of resolution 1994/41. The causal chain continues in so far as the level of respect for human rights has a direct bearing upon the quality of democracy in a State. Taking this logic into account, the "value for money" quotient of support for the independence and impartiality of the judiciary is high; for example, it can contribute greatly to the avoidance of discrimination engendering group disaffections and rivalries giving rise to conflicts.

95. Clearly, the Special Rapporteur will require adequate resources in order to implement his mandate effectively. He hopes that the Member States will, through the relevant United Nations organs, ensure that such resources are made available. In this regard, the Special Rapporteur wishes to acknowledge the welcome intention of the High Commissioner for Human Rights to provide

each special rapporteur with modern means of communication and access to an electronic database of human rights information (see E/CN.4/1995/5/Add.1). It is hoped that Member States will support such concrete and useful initiatives.

96. The practical implication of unmet resource requirements is the inability of the Special Rapporteur to organize and carry out his mandate: he cannot plan missions, make decisions on how (and sometimes whether) to intervene, etc. A clearly identified budget is a necessary precondition to efficient and effective work. This is especially so in the case of emergency situations: the Special Rapporteur must have a clear understanding of the financial resources available to him and/or the permissible expenses he may incur so that he does not enter into undertakings which are unfeasible financially or cause him to expend unrecoverable sums from his personal resources. This is all the more important since the Special Rapporteur is not a United Nations employee, but contributes his work on a pro bono basis.

97. In order to enhance his effectiveness, and taking into account the well-known constraints on the financial resources of the Organization, it may be necessary for the Special Rapporteur to accept voluntary contributions or material assistance from organizations or persons interested in supporting the work of the mandate. However, in principle, the Special Rapporteur will not accept contributions from Governments because of the potential for conflict of interest in possible cases of allegations: the Special Rapporteur will vigorously maintain his independence both in fact and in appearance.

## IV. CONCLUSIONS

98. It is worth repeating the observation made by Mr. Singhvi in his report of almost 10 years ago:

> "The contemporary international order is premised on the intrinsic and ultimate indivisibility of freedom, justice and peace. It is clear that in the world in which we live, there can be no peace without justice, there can be no justice without freedom and there can be no freedom without human rights." (E/CN.4/Sub.2/1985/18, para. 74)

99. Commission on Human Rights resolution 1994/41 not only confirms the above-noted general observation of Mr. Singhvi, but, following the end of the cold war, it also gives new meaning and impetus to another more precise observation of Mr. Singhvi:

> "The strength of legal institutions is a form of insurance for the rule of law and for the observance of human rights and fundamental freedoms and for preventing the denial and miscarriage of justice. To strengthen human rights in the legal system and to build up the strength of the legal system and to sustain the rule of law and eliminate any denial of justice should be a major strategy for updating the premises of the new world order." (E/CN.4/Sub.2/1985/18, para. 44)

100. It is the Special Rapporteur's strongly held opinion that the measure of the strength of any legal system is to be found in the degree of independence and impartiality of its judiciary.

101. In order for the principles of judicial independence and the independence of the legal profession to obtain their broadest and deepest effects, it is necessary that the existing standards of judicial independence and the independence of the legal profession enjoy wide dissemination. Emphasis should be placed on achieving such dissemination not only through the efforts of the Special Rapporteur, but also through the publications and promotional activities of the Centre for Human Rights.

102. Implementation of the Special Rapporteur's mandate to monitor progress achieved and to make concrete recommendations, including the provision of advisory services and technical assistance, will require close cooperation with the advisory services and technical assistance programme of the Centre for Human Rights. At a minimum, the Special Rapporteur will have to be kept regularly informed by the Centre.

103. With attention to the practical details of effective implementation of the mandate, it is absolutely clear that the mandate will not be effective without the provision of adequate human and financial resources. There exist some minimum requirements in this regard. Specifically, the Special Rapporteur concludes that he requires the full-time assistance of at least one Professional staff member of the Centre for Human Rights at Geneva, together with the provision of secretarial services at his place of residence (Kuala Lumpur). In addition, the Special Rapporteur requires certainty with regard to the budgetary resources at his disposal, in order to plan his activities and travels.

104. Ultimately, effective implementation of the mandate depends upon the will of Member States with regard to their own domestic jurisdiction. Where problems exist, cooperation of the concerned Governments is fundamental. In seeking to resolve existing problems, constructive dialogue is essential and, therefore, will be the principal method employed by the Special Rapporteur.

## V. RECOMMENDATIONS

105. In so far as this report is intended mainly to establish the terms of analysis and subsequent work of the Special Rapporteur in fulfilment of his mandate, he has no recommendations to make of a substantive nature. However, the Commission's adoption of the following recommendations may contribute to the better functioning of the mandate and would facilitate its effective implementation. Specifically, the Special Rapporteur recommends:

(a) That the Special Rapporteur be apprised on a regular basis of requests made for advisory services and technical assistance and of such services and assistance as are being provided through the Centre for Human Rights, or are foreseen, in the area of the administration of justice, in particular with regard to the independence and impartiality of the judiciary;

(b) That, with a view to achieving the widest dissemination of the principles of judicial independence and impartiality and the independence of the legal profession, the Centre for Human Rights publish a "fact sheet" on this subject.

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# QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

## Detention of international civil servants and their families

## Updated report of the Secretary-General prepared pursuant to Commission on Human Rights resolution 1994/42

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## INTRODUCTION

1. In 1987, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1987/21, by which it expressed deep concern that some 50 staff members were detained, imprisoned, reported missing - some having even died in detention - or held in a country against their will. Conscious that the rights of United Nations staff members should be given particular attention in view of the responsibility entrusted to the Organization in the area of human rights, the Sub-Commission requested the Secretary-General to submit to it, at its fortieth session, a detailed report on the situation of international civil servants and their families detained, imprisoned, missing or held in a country against their will, in order to enable it to consider those cases in the light of the international instruments relating to human rights.

2. At its forty-fifth session, the Commission on Human Rights adopted resolution 1989/28 on this subject. In that resolution the Commission took note of the report (E/CN.4/1989/19) submitted by the Secretary-General as an updated version of the report on detention of staff members of the United Nations and its specialized agencies presented to the Sub-Commission at its fortieth session (E/CN.4/Sub.2/1988/17).

3. Subsequently the Commission, after consideration of various reports submitted by the Secretary-General, requested him to continue his efforts to ensure that the human rights and privileges and immunities of United Nations staff members and experts and their families were fully respected and to submit to the Commission an updated report on the situation of international civil servants and their families detained, imprisoned, missing or held in a country against their will, including those cases which had been successfully settled during the year, as well as on the implementation of the measures referred to in paragraphs 3 and 4 of resolution 1989/28. 1/

4. At its forty-eighth session, the Commission adopted resolution 1992/26 in which it, inter alia, requested the Secretary-General to continue his efforts to ensure that the human rights, privileges and immunities of United Nations staff members, experts and their families are fully respected and to seek redress and compensation for the damage caused to those whose human rights, privileges and immunities had been violated, as well as their full integration. It also requested the Secretary-General once again to submit to the Commission at its forty-ninth session an updated version of the report.

5. At its forty-ninth session, after consideration of the report contained in document E/CN.4/1993/22, the Commission adopted resolution 1993/39 in which it requested the Secretary-General once again to continue his efforts to ensure that the rights and privileges of United Nations staff members and their families are respected and in particular requested the existing human rights mechanisms, including the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the

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1/ The report submitted by the Secretary-General are contained in documents E/CN.4/Sub.2/1988/17, E/CN.4/1989/19, E/CN.4/1990/14, E/CN.4/1991/18 and E/CN.4/1993/22.

Special Rapporteur on extrajudicial, summary or arbitrary executions, to examine as appropriate the cases involving the human rights of staff members of the United Nations system and their families, as well as experts, special rapporteurs and consultants, and to transmit the relevant part of their reports to the Secretary-General for inclusion in his next report to the Commission on Human Rights. It also requested the Secretary-General to submit to the Commission at its fiftieth session an updated version of the report. At its fiftieth session, after considering the report (E/CN.4/1994/30), the Commission adopted resolution 1994/42, in which it requested the Secretary-General to submit to it at its fifty-first session an updated version of the report on the situation of United Nations staff members, experts and their families detained, imprisoned, missing or held in a country against their will, including those cases which had been successfully settled since the presentation of the last report, as well as on the implementation of the measures referred to in the resolution. The present report is submitted pursuant to this request.

6. For its part, the Sub-Commission considered at its forty-first session the preliminary report (E/CN.4/Sub.2/1989/28), entitled "Protection of the human rights of United Nations staff members, experts and their families" submitted by Mrs. Mary C. Bautista pursuant to its resolution 1988/9. The Sub-Commission adopted resolution 1989/30 in which it invited Mrs. Bautista to continue her study and to submit a report to the Sub-Commission at its forty-second session, with proposals for practical measures to improve the present system and ensure that staff members of the United Nations and the specialized agencies were protected.

7. Mrs. Bautista presented her updated report (E/CN.4/Sub.2/1990/30) to the Sub-Commission at its forty-second session. In its introduction, the report contained an analytical survey of the problems in their various dimensions, including the legal rights of the United Nations in cases of arrest or detention of staff members.

8. Pursuant to Sub-Commission resolution 1990/20, Mrs. Bautista requested the Governments of Afghanistan, Chad, Ethiopia, Israel, Jordan, Nepal, Somalia and the Syrian Arab Republic to provide her with any information or comments they might have with regard to staff members who, to her knowledge, were being held in detention in those countries. She also requested the United Nations Security Coordinator and the heads of specialized agencies and other intergovernmental organizations to provide her with information on the violations of human rights of staff members and their families, as well as on resolved and pending cases of violations of human rights of those persons, on steps which had been taken to assist them and possible suggestions on how to avoid the recurrence of such incidents. Information was also requested on the matters raised in paragraphs 3 and 4 of Sub-Commission resolution 1989/30.

9. **In the same resolution, Mrs. Bautista was requested to submit a final version of her report to the Sub-Commission at its forty-third session. However, in view of the fact that only a few additional replies had been received, the Special Rapporteur requested the Sub-Commission's authorization to defer her final report (E/CN.4/Sub.2/1991/23, para. 12).**

10. In its resolution 1991/17, the Sub-Commission noted with regret the limited number of replies received from Governments and organizations of the United Nations system and requested the Secretary-General to redouble his efforts to ensure that the human rights and privileges and immunities of the personnel of the United Nations system and their families, as well as experts and consultants, were fully respected. The Sub-Commission invited the Special Rapporteur to submit a final report at its forty-fourth session, including practical recommendations for measures to improve, on a long-term basis, the protection of personnel of the United Nations system and their families, as well as experts and consultants.

11. In accordance with paragraph 6 of Sub-Commission resolution 1991/17, the Special Rapporteur once again addressed, on 16 December 1991, notes verbales to Governments and letters to the Secretary-General of the United Nations and to the heads of specialized agencies requesting additional information. Replies were received from the Governments of Chile, China, Israel, Pakistan, the Sudan and the Syrian Arab Republic. The United Nations Security Coordinator also replied. In addition, replies were received from the United Nations Development Programme, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Economic Commission for Latin America and the Caribbean, the United Nations Industrial Development Organization and the World Meteorological Organization.

12. The Special Rapporteur submitted her final report to the forty-fourth session of the Sub-Commission in August 1992 (E/CN.4/Sub.2/1992/19), incorporating a set of recommendations, which were reproduced for the guidance of the Commission in the report of the Secretary-General to its forty-ninth session (E/CN.4/1993/22, sect. IV).

13. The Special Rapporteur pointed out that the submission of a final report by no means implied that an adequate solution had been found to the problem in question. She noted that ad hoc measures had been taken by the administrations of the various organizations in the United Nations system to rehabilitate and reintegrate some staff members whose rights had been violated. In addition, she noted that, following the landmark decision of the United Nations Administrative Tribunal (No. 482 of 25 May 1990) on secondment, confidence in the principle of the independence of international civil servants had gradually been restored and Articles 100 and 105 of the Charter reaffirmed.

14. The Sub-Commission subsequently adopted resolution 1992/24 in which it recommended to the Commission on Human Rights that it request the existing human rights machinery, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearance, the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, to examine the cases involving the human rights of staff members of the United Nations system and their families, as well as experts, special rapporteurs and consultants, and to transmit the relevant parts of their respective reports to the Secretary-General for inclusion in his report to the Commission on Human Rights under item 10 of its agenda.

15. The Sub-Commission in addition requested the Secretary-General to present a report annually to the Third Committee of the General Assembly on the implementation of protective measures and on redress for possible harm caused.

16. The General Assembly, in its resolution 45/240 of 21 December 1990, took note with grave concern of the report of the Secretary-General (A/C.5/45/10 and Corr.1) and of the developments indicated therein, in particular the significant number of new cases of arrest and detention and those regarding previously reported cases under that category. In the same resolution, the General Assembly deplored the increase in the number of cases where the functioning, safety and well-being of officials had been adversely affected, as well as the increasing number of cases in which the lives and well-being of officials had been placed in jeopardy during the exercise of their official functions. The Assembly urged the Secretary-General to give priority to the reporting and prompt follow-up of cases of arrest, detention and other possible matters relating to the security and proper functioning of officials of the United Nations and the specialized agencies and related organizations.

17. Subsequently, the Secretary-General submitted to the General Assembly at its forty-sixth session his report "Personnel questions: respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations" (A/C.5/46/4). However, pursuant to General Assembly resolution 46/220 of 20 December 1991 on the rationalization of the work of the Fifth Committee, the Assembly decided to adopt the biennial approach for matters related to personnel questions and no resolution was adopted at the forty-sixth session.

18. The report of the Secretary-General to the General Assembly at its forty-seventh session (A/C.5/47/14) was therefore submitted pursuant to the same Assembly resolution, 45/240 of 21 December 1990. The Assembly also had before it a note by the Secretary-General containing the views of the staff representatives of the United Nations Secretariat (A/C.5/47/20). The Assembly adopted resolution 47/28 on the issue in which it requested the Secretary-General to take all necessary measures to ensure the safety of United Nations personnel, as well as those engaged in peace-keeping and humanitarian operations. It reminded host countries of their responsibility for the safety of peace-keeping and all United Nations personnel on their territory. The Assembly also requested the Secretary-General to continue to submit, on behalf of the Administrative Committee on Coordination, reports concerning respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations.

19. In the light of the concern expressed at the developments referred to in the report of the Secretary-General, the General Assembly decided at its resumed forty-seventh session that, despite its previous resolution providing that personnel questions should be considered on a biennial basis (46/220), the Secretary-General should be requested to submit to its forty-eighth session updated information on the situation of United Nations staff members with special regard to violations of privileges and immunities, taking into account its resolutions 45/240 of 21 December 1990 and 47/28 of 25 November 1992 (decision 47/457 C of 8 April 1993). This information, in a note submitted by the Secretary-General, is contained in document A/C.5/48/5.

20. In the light of the above-mentioned developments and in compliance with Commission on Human Rights resolution 1994/42, the present report describes recent developments related to the situation of staff members of various United Nations bodies in chapter I. Chapter II describes one re-opened case and cases that have recently been clarified. Chapter III focuses on action and proposals to further respect for the human rights of international civil servants, including those serving in peace-keeping missions.

## I. RECENT DEVELOPMENTS

### A. Report by the Secretary-General to the General Assembly

21. The report submitted by the Secretary-General to the General Assembly on respect for the privileges and immunities of officials of the United Nations system (A/C.5/49/6) covers the period from 1 July 1993 to 30 June 1994. In section I, on security and safety of officials, it is stated that a matter of particular concern is the fact that 18 staff members (both international and national) belonging to different organizations lost their lives during the reporting period and through the preparation of the report. Annex II to the Secretary-General's report contains a list of 18 staff members who had lost their lives since 1 July 1993. Annex I to the Secretary-General's report provides a consolidated list of staff members under arrest and detention or missing; the list is reproduced in the present document (annex I). In an addendum to his report (A/C.5/49/6/Add.1), the Secretary-General stated that preliminary information received from a number of agencies indicated that 39 staff members had reportedly been killed in Rwanda during the events of April 1994. The following are the names of the deceased:

| Name | Agency |
|---|---|
| Innocent Butera | UNDP |
| Abdellaraman Gakwavu | UNDP |
| Cyridion Habhalimana | UNDP |
| Thérèse Kabanda | UNDP |
| Fulgence Kanamugire | UNDP |
| Angélique Kayijamahe | UNDP |
| Protais Kayiranga | UNDP |
| Félix Kayitaba | UNDP |
| André Kayumba | UNDP |
| Laurent Mbaga | UNDP |
| Emmanuel Mbanziliza | UNDP |
| Festus Ndayisaba | UNDP |
| Florence Ngirumpatse | UNDP |
| Assiel Nsengimana | UNDP |
| Aloys Nyabutsitsi | UNDP |
| Dancilla Rushemeza | UNDP |
| Emmanuel Turatsinze | UNDP |
| François Gasana | UNHCR |
| Gaspard Gashagaza | UNHCR |
| Jean B. Gisa | UNHCR |
| Odette Mukashefu | UNHCR |
| Albert Mwigishwa | UNHCR |

| Name | Agency |
|---|---|
| J. Nyakagaragu | UNHCR |
| Sixte Rugema | UNHCR |
| Théophile Rutagengwa | UNHCR |
| François Rutayigirwa | UNHCR |
| Anicet Senjeje | UNHCR |
| Marcel Twagirayezu | UNHCR |
| Jean D. Gihana | UNICEF |
| Laurent Kalinganire | UNICEF |
| Charles Kalisa | UNICEF |
| Aloys Kayibanda | UNICEF |
| Jérome Kayitare | UNICEF |
| Visteur Nshimiyana | UNICEF |
| Michel Rudaseswa | UNICEF |
| Théogène Rudasingwa | UNICEF |
| Longin Rukanika | UNICEF |
| Jean D. Senyana | UNICEF |
| Pauline Tuyisenge | UNICEF |

The list should include the name of Mr. Damascene Sindikubwabo, a staff member of the Economic Commission for Africa, killed in Rwanda on 8 June 1994. The details of this case are summarized below.

## B. Information submitted by individual organizations and United Nations subsidiary organs and offices or joint subsidiary organs

### 1. Economic Commission for Africa

22. Mr. Andualem Zeleke (Ethiopia) a locally recruited staff member of ECA, has been detained since 25 June 1993. The Ministry of Foreign Affairs of the transitional Government of Ethiopia advised that his case will be taken up together with that of others who allegedly have been involved in the Red Terror of the previous regime. Mr. Nadew Kassa, dependent son of Mr. Tsegaye Kassa (Ethiopia), a locally recruited staff member of ECA, has been detained since early February 1994. No reply as to the reasons for his arrest has been provided by the Government authorities.

23. Mr. Damascene Sindikubwabo (Rwanda), a locally recruited staff member of the ECA regional office in Gisenyi, was killed on 8 June 1994 on the office premises. According to reports, the ECA regional office in Gisenyi was occupied, apparently by Government forces, and the premises sustained some damage.

24. At the beginning of September 1993, armed Government troops intruded upon the ECA compound on two occasions. The incidents were reported to the authorities. The rented apartment in Addis Ababa of an ECA staff member on mission in New York was illegally occupied for more than one year. Eventually the Government authorities investigated the case and the staff member was able to recover some of her belongings.

## 2. United Nations Relief and Works Agency for Palestine Refugees in the Near East

25. During the period from 1 July 1993 to 30 June 1994, there was a significant reduction, in comparison with the preceding year, in the number of staff members in the West Bank and Gaza Strip who were arrested, held in detention without trial and subsequently released; however, eight staff members in the West Bank remained in detention at the end of the reporting period, in comparison with only three at the end of the preceding year, though in the Gaza Strip this number dropped from 23 to 10. The number of staff arrested and detained in the Syrian Arab Republic was three, in Jordan one and in Lebanon one. The total number of staff so detained during the reporting period was 51, of whom 28 were arrested and released without charge or trial, and 5 were charged, tried and sentenced. The remaining 18, all staff members in the West Bank and Gaza Strip as described above, were still in detention on 30 June 1994.

26. Of the 16 staff members reported in last year's report (see E/CN.4/1994/30, para. 29) as having been deported to Lebanon, all had returned with the permission of the Israeli authorities by December 1993; four were thereupon placed in detention, although by the end of the reporting period all but one of these had been released. Subsequent to the Agreement on the Gaza Strip and the Jericho area, signed at Cairo on 4 May 1994, a number of Palestinians, including four staff members, were transferred from prisons in the Gaza Strip to detention centres and prisons in Israel.

27. Although the Agency made frequent approaches to the relevant authorities during the reporting period, UNRWA was not provided with adequate and timely information as to the reasons for the arrest and detention of its staff members. UNRWA had access to 3 staff members from the West Bank and 20 from the Gaza Strip detained in prisons and detention centres in the West Bank, the Gaza Strip and Israel. The treatment of staff members in detention continued to be a matter of considerable concern to the Agency, with staff members both in detention and upon their release complaining of having been subjected to various forms of physical and psychological mistreatment. Despite continued approaches by the Agency to the relevant Governments, the Agency was unable to visit staff detained in Jordan, Lebanon and the Syrian Arab Republic.

28. Difficulties continued in relation to the movement of staff members into and out of the West Bank and Gaza Strip. As reported in previous years, there were lengthy delays by the Israeli authorities in the clearance of official travel for locally recruited staff. The particular restrictions on movement from the West Bank and Gaza Strip to Israel and East Jerusalem, as described in the Secretary-General's 1993 report (A/C.5/48/5), continued during the reporting period, with the Israeli authorities insisting on the establishment of a system of exit permits, which delayed and in some cases prevented staff members from entering East Jerusalem and Israel from the West Bank and the Gaza Strip; tighter restrictions were imposed with the closure of the West Bank and the Gaza Strip following the massacre at the al-Ibrahimi mosque in the town of Hebron on 25 February 1994. Difficulties were experienced by the Agency in the Gaza Strip in securing exit permits for its drivers, though by the end of the reporting period this had ceased to be a particular problem. In relation to movement within the West Bank and the Gaza Strip, the

imposition of curfews constituted a further impediment to the movement of staff, with the Israeli authorities continuing to insist that locally recruited staff members could operate only if in possession of curfew permits; in the Gaza Strip, procedures to obtain and renew curfew permits were subjected to lengthy delays by the Israeli authorities, though following the entry into force of the provisions of the Cairo Agreement on the Gaza Strip and the Jericho area (4 May 1994) towards the end of the reporting period, curfew passes needed no longer to be obtained from the Israeli authorities. The arbitrary declaration of closed military areas by the Israeli authorities continued to impede the official movement of staff members, both international and locally recruited.

29. For the greater part of the year under review, UNRWA staff in the West Bank and the Gaza Strip performed their duties in the context of ongoing violence and the Agency continued to be concerned about the safety of staff, both locally recruited and international. Staff members faced various forms of mistreatment by members of the Israeli security forces, including injury by live and other forms of ammunition, beatings, and threatening and abusive behaviour. At times they also faced threats and attacks by Israeli settlers in the occupied territory and by certain elements in the Palestinian population. Such incidents of mistreatment were protested by the Agency to the appropriate authorities, and appropriate follow-up action was undertaken by the Agency.

30. During the reporting period, two staff members were killed in Lebanon, both by persons whose identity remained unknown; on 21 July 1993, an UNRWA teacher was shot dead in the presence of his family near Saida and on 15 November 1993 an UNRWA head teacher was shot dead as he was leaving his school near Saida. In addition, on 21 October 1993 an UNRWA teacher was shot dead in the town of Gaza by persons unknown. On 28 March 1994 a staff member was shot dead in the Gaza Strip by the Israeli security forces in the context of a confrontation with Palestinian armed elements.

### 3. Office of the United Nations High Commissioner for Refugees

#### (a) Deaths

31. On 13 August 1994, a UNHCR international staff member was shot dead in Kirundo, northern Burundi. It is believed that he was caught in gunfire aimed at a local official. On 2 February 1993, one UNHCR local staff member was killed by shell fire near Mostar during an attack on a relief convoy. On 14 August 1993, a local UNHCR staff member was shot dead in Vitez by a sniper firing a high-tensile bullet, which pierced the armoured vehicle in which the staff member was driving. In Somalia, on 18 April 1994, a UNHCR international staff member was fatally shot through the head when an unknown gunman opened fire on the UNHCR aircraft on which he was a passenger while it was taxiing at Afmadu airport.

#### (b) Injuries

32. On 17 November 1993 a UNHCR local staff member was shot in the shoulder by an unknown assailant while travelling in a UNHCR vehicle in Kakanj in Bosnia and Herzegovina. In Liberia, on 23 September 1993 at Vahun, a refugee

camp and a UNHCR camp were reportedly attacked and bombed by two aircraft under the command of the Economic Commission of African States Military Observer Group (ECOMOG).

(c) Detentions and arrests

33. At Banja Luka, former Yugoslavia, on 15 December 1993, four UNHCR staff were arrested when they went to investigate two explosions at a local mosque; after questioning, they were released. At Dobron, former Yugoslavia, on 27 July 1994, an international and a local staff member were detained by the Bosnian Serbs at Dobron and taken to Visegrad; the Serbs wanted to use the UNHCR staff to bargain for the release of a Serbian family held in Gorazde. At Kasindolska, former Yugoslavia, on 30 May 1994, a UNHCR local staff member, United Nations staff and two journalists were detained at the Kasindolska check-point by the Serb police and taken to Ilidza to be interrogated by the police. At Kiseljak, former Yugoslavia, on 3 September 1993, the newly arrived head of the UNHCR office together with another international staff member and two local staff were stopped by armed soldiers. They were ordered to leave their vehicle and made to lie down on the side of the road; they were then blindfolded, ankles bound together and wrists bound behind their backs. The hijackers left when a British patrol happened to pass by. On 17 February 1994, a UNHCR local staff member was detained in Kiseljak by police.

(d) Assault or robbery

34. On 25 November 1993, at Kiseljak, former Yugoslavia, a local staff member was assaulted and beaten; the vehicle was stolen. On 7 September 1993, at Monrovia, Liberia, a UNHCR convoy was held at a check-point by the United Liberation Movement of Liberia for Democracy (ULIMO) troops who insisted on searching the vehicles. The matter was eventually resolved after some hours by the intervention of Government authorities. On 12 February 1994, at Kigali, Rwanda, two UNHCR staff were stopped at an improvized check-point (boulders, rocks, etc.) by 10 to 12 heavily armed men, robbed of all valuables, radio made unusable by cutting wire; the vehicle was eventually returned. On 7 September 1993, at Hargeisa, Somalia, a UNHCR staff member was ambushed by armed men and robbed; on 9 October 1993, also at Hargeisa, two UNHCR international staff members and local staff were stopped while travelling between the airport and the town and were subjected to an armed attack by unidentified assailants.

(e) Hostage-taking and hijacking

35. On 2 December 1993, at Hargeisa, Somalia, an international staff member was taken hostage by bandits who demanded payment for his release; he was eventually released following the intervention of the local authorities. On 7 December 1993, in Cambodia, a vehicle was hijacked while four staff members were travelling in the Siem Reap district; the staff were assaulted and robbed. On 4 July 1993, in Mozambique, a staff member was wounded during the hijacking of a small chartered aircraft flying from Maputo to Swaziland.

### 4. United Nations Environment Programme

36. In the review period there were no arrests or detentions of officials of the United Nations or specialized agencies by the Government of Kenya. However, many United Nations officials were the victims of a rising tide of criminal violence in the country. The most serious of these was the murder of a senior official in the course of a vehicle hijacking (12 September 1993), a bandit attack on a UNICEF compound in north-east Kenya which resulted in the death of a pilot attached to UNICEF and the wounding of a UNICEF official (3 September 1993) and finally the serious wounding of an official of the United Nations Centre for Human Settlements, again in the course of an armed hijacking in Nairobi (8 May 1994). In addition to these crimes there have been numerous other crimes directed at United Nations staff, including 15 vehicle hijackings.

### 5. United Nations Industrial Development Organization

37. During the night of 14 September 1993, while driving a car from Vinkovci to Zagreb to meet with another expert, a UNIDO staff member was detained at a Serbian check-point in the region of Okucani. Although he was in possession of a laissez-passer, the staff member was led away and questioned for three hours. He was obliged to stay the night in his car, under guard. The following day he was questioned further and kept under watch by guards. Efforts by United Nations civilian police to secure his release were initially unsuccessful, and the staff member was obliged to spend a further night in his car under guard. On 16 September 1993, the United Nations civilian police returned to the Serbian check-point with appropriate documentation and the staff member was released accordingly.

38. A UNIDO Associate Expert, Mr. Michael Baran, along with his wife, disappeared while in the immediate vicinity of the Preah Vihear temple on the border between Thailand and Cambodia on 23 May 1994. They have not been seen since. Despite efforts to locate Mr. and Mrs. Baran, it has not been possible to determine their whereabouts.

### 6. World Food Programme

39. In Afghanistan, in August 1993, Mr. Arif Kobi, a WFP storekeeper under a local special service agreement contract, was arrested by customs officers in Termez, allegedly for smuggling 26.7 million roubles which belonged to WFP; no visits were allowed and WFP remains without news about the staff member. In January 1994 an outbreak of fighting in Kabul trapped four United Nations staff members, including a WFP officer, in a bunker. They were later evacuated by convoy during a cease-fire negotiated by the United Nations. In March 1994, owing to the prevailing security situation, all WFP staff in Mazar had to be evacuated to Termez.

40. On 10 February 1994, in Angola, heavy fighting in Kuite and repeated bombing of Huambo necessitated the evacuation of United Nations agency personnel from those cities. This was done successfully, but caused serious injury to two WFP labourers. On 11 March 1994, at Menoque, heavy shelling between armed adversaries required the evacuation of all international staff, including that of WFP. On 15 April 1994 at Malange, the WFP deputy base

manager was arrested and jailed by local police on an accusation of being an accomplice in drug transport; following the intervention of the WFP Country Director, the staff member was released from jail and placed under house arrest pending investigation. On 20 April 1994 at Lobito, one of the WFP airport stevedores was shot on his way back home by bandits. He was treated in Lobito hospital and reportedly his life is no longer in danger.

41. On 20 April 1994, at Luanda, a WFP car with driver and guard was the subject of a hijack attempt by two armed men; the WFP guard fired at the robbers, killing one and injuring the other. On 15 June 1994, 5 United Nations staff members (including 2 from WFP) and 58 non-governmental organization staff (including 30 of the International Committee of the Red Cross) were taken hostage by UNITA forces in Huambo and not authorized to leave; negotiations resulted in their release on 18 June 1994.

42. In Burundi, on 1 May 1994, a WFP national staff member was killed in an accident linked to ethnic strife. In Cambodia, on 11 August 1993, the house guard of a WFP staff member was stabbed to death by a burglar; police investigations did not result in an arrest. In Kenya, on 27 March 1994, a WFP staff member and his wife were ambushed on the main highway between Nakuru and Naivasha by four young men with knives, pangas and crow bars; both were severely beaten, resulting in broken arms, deep cuts, bruises and severe shock. They were saved by villagers who ran to their rescue. Police are investigating the incident.

43. In Mozambique, at Maputo, on 14 March 1994, a United Nations Volunteer was shot and seriously wounded by armed bandits who escaped with the staff member's vehicle. The staff member had to be evacuated urgently to South Africa for medical intervention. He is fortunately recovering well from his ordeal. In Rwanda, following civil unrest during April 1994, two WFP national staff were reportedly killed. More national staff are still unaccounted for.

44. In Somalia, on 1 January 1994, at Baidoa, one guard was killed and the driver seriously injured (paralysed) when bandits took the WFP vehicle in front of the WFP office in Baidoa. On 10 January 1994, in front of the WFP office in Mogadishu, a WFP staff member was kidnapped by an armed group; after intensive negotiations with the kidnappers, he was released unharmed a few days later. In Mogadishu, on 21, 22 and 26 February 1994, demonstrators laid siege to the WFP compound, claiming food distributions; United Nations troops had to be deployed around the compound to protect WFP staff. On 13 June 1994, at Mogadishu, a WFP senior secretary was killed in an ambush on his way back home from the office by unidentified gunmen.

45. In the Sudan, on 4 December 1993, in the Solat Corridor (southern Sudan), in the course of delivering food supplied from a river barge in Malual (southern Sudan), an Operation Lifeline Sudan (OLS) team of WFP was threatened with firearms by an agitated crowd, but happily reason prevailed in the end. On 24 February 1994, in Attar (southern Sudan), during a United Nations relief operation by barge on the White Nile, a United Nations OLS team, including two WFP staff members, was held captive by a Sudan People's Army force; a WFP monitor was released unharmed on 27 February 1994 and a local WFP staff member was released on 2 March 1994, together with three UNICEF national staff

members. On 8 June 1994, after radio contact was lost with the barge crew on their way to Juba in southern Sudan, a light aircraft was sent for a fly-over: the pilot reported that the food on the barge was looted by a crowd and the crew kept captive. A military platoon was dispatched to the place to restore order and release the captives; the staff were subsequently released unharmed.

46. In Uganda, on 23 June 1994, an armed attack was reported on a truck convoy in northern Uganda (20 km north of Gulu); reports indicated that two WFP drivers were killed and one seriously wounded. Five trucks were burned. In Yemen, on 2 February 1994, a WFP staff member was kidnapped by unknown persons together with two UNDP staff members while travelling by car from Sana'a to Taiz; she was released two days later, unharmed.

## II. RECENT CASES

47. At its latest session (late November-early December 1994), the Working Group on Arbitrary Detention invited the Vice-President of the Association for the Security and Independence of International Civil Servants to report to it on certain cases of detention of international civil servants and locally recruited United Nations staff. The Working Group decided to consider those cases and to give the issue priority.

### Re-opened case

48. At the request of the wife of Cornelo Soria Espinosa, a staff member of the Economic Commission for Latin America and the Caribbean, murdered in Santiago, Chile, on 14 July 1976, and of the International Commission of Jurists, the Association for the Security and Independence of International Civil Servants approached the President of the Supreme Court of Chile to request reconsideration of the decision of a Supreme Court judge to close the Soria case. As a result of action by the President of the Republic of Chile, under a provision enabling him to request a review of a judicial decision having potential consequences for Chile's foreign relations, the case was re-opened. In a press release of 14 November 1994 (56/SA/94/225), the Secretary-General expressed the hope that that decision would facilitate a successful and long-awaited resolution of the case. He also noted that from the day of Mr. Soria's death, the United Nations had taken an active interest in the outcome of the investigation of the circumstances surrounding Mr. Soria's death and demanded that full justice be done.

### Recently clarified cases

49. On 20 September 1994, four staff members of the Economic Commission for Africa, Belete Kurabachew, Tenagne Ingda Work, Amarech Mengistu and Mamo Desta, were arrested and arbitrarily detained at Addis Ababa, Ethiopia. The four staff members were released on 24 November 1994. In another case, Mr. Jiang Yue, a staff member of the International Atomic Energy Agency (IAEA), who had been prevented from returning from home leave in his country (People's Republic of China), was able to resume his post at Vienna towards the end of 1994 as a result of judgement No. 1312 (Jiang Case) of the Administrative Tribunal of the International Labour Organisation.

## III. ACTION AND PROPOSALS TO FURTHER RESPECT FOR THE HUMAN RIGHTS OF INTERNATIONAL CIVIL SERVANTS, INCLUDING THOSE SERVING IN PEACE-KEEPING MISSIONS

50. Pursuant to a statement by the President of the Security Council, on behalf of the Council, on 31 March 1993, in which he stressed in particular that all competent United Nations bodies should take concerted action with a view to improving the security of United Nations forces and staff members, two draft conventions on the security of United Nations personnel were submitted to the competent bodies by New Zealand and Ukraine.

51. Ukraine presented draft elements for an international convention on the status and safety of the personnel of the United Nations force and associated civilian personnel; the delegation of New Zealand proposed a draft convention on responsibility for attacks on United Nations personnel (see E/CN.4/1994/30, annexes II and III).

52. Other proposals put forward by delegations included: more forceful actions to be taken by the Security Council, the provision to personnel of adequate protective gear, the reconfirmation of the existing principles and obligations of host Governments, improved information-gathering capacity of the Organization and the establishment of a unified compensatory system for the death and injury of peace-keeping personnel.

53. At its forty-eighth session, the Sixth Committee established a working group to discuss these issues further. Its Chairman, on 15 November 1993, stated that there was no disagreement that a new instrument should cover United Nations military personnel and civilian personnel, including staff of specialized agencies and entities having a defined legal connection with the United Nations who are employed in an operation authorized by the Security Council.

54. On 9 December 1993, the General Assembly decided to establish an ad hoc committee to elaborate an international convention on the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on them.

55. The Committee held its first session from 28 March to 8 April 1994; it had before it a joint proposal submitted by New Zealand and Ukraine (A/AC.242/L.2), a working paper submitted by Denmark, Finland, Iceland, Norway and Sweden (A/AC.242/L.3) and a note by the Secretary-General (A/AC.242/1). It decided to base its work on the joint proposal by New Zealand and Ukraine, it being understood that the "elements" of the working paper submitted by the five Nordic countries would be considered at the same time as the corresponding articles of the joint proposal.

56. The Committee held a second session from 1 to 12 August 1994. At the close of the two sessions, a revised version of a consolidated text was prepared. Introducing the revised version, the Chairman of the Committee indicated that the new text had been the result of consultations among the delegations of all the regional groups and was aimed at improving the original text to the extent possible. He noted that certain differences of opinion had not yet been eliminated, in particular concerning the nature of the operations

and categories of staff to be covered by the future instrument. While he acknowledged that the lack of agreement on the scope and definitions made discussion of the rest of the text complicated, he stressed that the uncertainties affected only a small number of articles and that it had been possible to make progress on a number of aspects.

57. In accordance with paragraph 5 of General Assembly resolution 48/37 of 9 December 1993, the Working Group established at the forty-eighth session under the agenda item "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice" was again established on 26 September 1994 at the forty-ninth session as part of the work of the Sixth Committee. The Working Group had before it the revised version of the negotiating text produced by the Ad Hoc Committee at its two sessions.

58. On 14 October 1994, the Working Group decided to submit the text of the draft convention to the Sixth Committee for consideration and adoption. The text was adopted by the Sixth Committee and recommended to the General Assembly for adoption (A/49/742). By resolution 49/59, the General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel (annex II).

59. The adoption of this Convention is a real step forward in that the problems raised by the increasing number of missions in crisis situations are taken into consideration. It should however be noted that certain bodies, including the Inter-Agency Standing Committee, had pointed out that the coverage offered by the draft convention was limited to personnel of missions decided upon by the Security Council and that it did not include all members of United Nations missions without distinction as to the type of mandate entrusted to them.

60. The Secretary-General urges the largest possible number of States to ratify the Convention.

Annex I

CONSOLIDATED LIST OF STAFF MEMBERS UNDER ARREST AND DETENTION OR MISSING AND WITH RESPECT TO WHOM THE UNITED NATIONS AND THE SPECIALIZED AGENCIES AND RELATED ORGANIZATIONS HAVE BEEN UNABLE TO EXERCISE FULLY THEIR RIGHT TO PROTECTION

| Name | Agency | Place and date of incident |
|---|---|---|
| Mr. Abdala Daker Hayatli | UNRWA | Missing in the Syrian Arab Republic since 20 April 1980. |
| Mr. Izzedine Hussein Abu Khreish | " | Detained in the Syrian Arab Republic since 11 September 1980. |
| Mr. Mahmoud Hussein Ahmad | " | Missing in Lebanon since 22 March 1983. Reportedly detained by militias or unknown elements. |
| Mr. Mohammad Ali Sabbah | " | Missing in Lebanon since 22 March 1983. Reportedly detained by militias or unknown elements. |
| Mr. Daulat Mir | FAO | Detained on 28 August 1984 and subsequently conscripted into military service in Afghanistan. |
| Mr. Alec Collett | UNRWA | Detained in Lebanon by militias or unknown elements since 25 March 1985. |
| Mr. Mohammad Mustafa El-Hajj Ali | " | Missing in Lebanon since 28 November 1986. Reportedly detained by militias or unknown elements. |
| Mr. Saleem Hairan | FAO | Detained and conscripted on 27 January 1988 into military service in Afghanistan. |
| Mrs. Zainab Aw Jama Adan | WFP | Missing in Somalia since 4 June 1988. |
| Mr. Mohammed Omar | FAO | Detained and conscripted on 17 May 1989 into military service in Afghanistan. |
| Mr. Abdul Fattah | WFP | Abducted in Pakistan by unknown elements on 3 September 1989. |

| Name | Agency | Place and date of incident |
|---|---|---|
| Mr. Ahmad Mohamed Ali | WFP | Detained in Somalia by the Somali National Security Service since 25 May 1990. |
| Mr. Abdalla Ismail Abu Shawareb | " | Detained in the Gaza Strip since 6 November 1990. |
| Mr. Ghassan Musaed El Arabid | " | Detained in the Gaza Strip since 11 August 1991. |
| Mr. Kassu Asgedon | " | Detained in Ethiopia since 4 September 1991. |
| Mr. Mohammad Rajab El-Sa'afin | UNRWA | Detained in the Gaza Strip since 20 July 1992. |
| Mr. A/Fattah Ismail Fayyad | " | Detained in the Gaza Strip since 22 September 1992. |
| Mr. Mohammed Najib Madi | " | Detained in the Gaza Strip since 15 October 1992. |
| Mr. Amin Ali el Khatib | " | Detained in the Gaza Strip since 22 November 1992. |
| Mr. Hasam Hassan Abu Jray | " | Detained in the Gaza Strip since 14 February 1993. |
| Mr. Hasan Mohammad Hammad | " | Detained in the West Bank since 15 February 1993. |
| Mr. Maher Salim El Toukhi | " | Detained in the Gaza Strip since 18 February 1993. |
| Mr. Suliman A/Hadi Abu Rous | " | Detained in the Gaza Strip since 14 March 1993. |
| Mr. Sami Abdalla Abu Hmaiseh | " | Detained in the Gaza Strip since 11 April 1993. |
| Mr. Yousef Dawoud Shahin | " | Detained in the Gaza Strip since 2 May 1993. |
| Mr. Ahmad Hasan Abu Houli | " | Detained in the Gaza Strip since 3 May 1993. |
| Mr. Jaber Ali Wahdan | " | Detained in the Gaza Strip since 3 May 1993. |
| Mr. Abdel Hakim A/Rabbu Abu Houli | " | Detained in the Gaza Strip since 6 May 1993. |

| Name | Agency | Place and date of incident |
|---|---|---|
| Mr. Suliman Ibrahim Jouda | UNRWA | Detained in the Gaza Strip since 20 May 1993. |
| Mr. Mahmoud Arafat El Khawaja | " | Detained in the Gaza Strip since 14 June 1993. |
| Mr. Mahmoud Ghanem | " | Detained in the Gaza Strip since 25 June 1993. |
| Mr. Andualem Zeleke | ECA | Detained in Ethiopia since 25 June 1993. |
| Mr. Jamal Atiya Tayeh | UNRWA | Detained in the Gaza Strip since 28 June 1993. |
| Mr. Walid Yusuf El Zatma | " | Detained in the Gaza Strip since 9 August 1993. |
| Mr. Ahmad Said Ahmad Lubbad | " | Detained in the Gaza Strip since 19 August 1993. |
| Ms. Sara J'areh | " | Detained in the West Bank since 24 September 1993. |
| Mr. Rida Mahmoud Khaled | " | Detained in the West Bank since 18 October 1993. |
| Mr. Mani Ali El-Kurd | " | Detained in the West Bank since 25 October 1993. |
| Mr. Walid Jaber | " | Detained in the Gaza Strip since 5 January 1994. |
| Mr. Ahmnad Tawfiq Abu Hassanain | " | Detained in the Gaza Strip since 5 January 1994. |
| Mr. Mohammad Abbas Hassouna | " | Detained in the Gaza Strip since 10 January 1994. |
| Mr. Ahmad Abdel Rahman Sweilem | " | Detained in the West Bank since 11 January 1994. |
| Mr. Zuhair Ahmad El Qaisi | " | Detained in the Gaza Strip since 17 January 1994. |
| Mr. Kamal El Ghoul | " | Detained in the Gaza Strip since 17 February 1994. |
| Mr. Kaled Mahmound Zagout | " | Detained in the West Bank since 9 March 1994. |

| Name | Agency | Place and date of incident |
|---|---|---|
| Mr. Ayoub A/Aziz Khadoura | UNRWA | Detained in the Gaza Strip since 24 March 1994. |
| Mr. Khader Mahmoud Abbas | " | Detained in the Gaza Strip since 9 April 1994. |
| Mr. Naser Yusuf Matar | " | Detained in the West Bank since 13 April 1994. |
| Mr. Bassam Nihad Jarrar | " | Detained in the West Bank since 18 April 1994. |
| Mr. Nabil El Sawalhi | " | Detained in the Gaza Strip since 19 April 1994. |
| Mr. Mustafa Rashid Nakhleh | " | Detained in the West Bank since 19 April 1994. |
| Mr. Ghazi Mohammad Haj Asad | " | Detained in the West Bank since 21 April 1994. |

Note

This consolidated list contains in chronological order the names of staff members who remained under detention or missing as of 30 June 1994. The list, however, is not compiled to provide information on all cases of staff members who have been arrested, detained or missing in the past or on the cases where staff members have lost their lives in the performance of official duties.

ANNEX II

# Convention on the Safety of United Nations and Associated Personnel

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

## Article 1

## Definitions

For the purposes of this Convention:

(a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency,

to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

(c) "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or

(ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(d) "Host State" means a State in whose territory a United Nations operation is conducted;

(e) "Transit State" means a State, other than the host State, in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.

2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.

2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5

Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

(a) Respect the laws and regulations of the host State and the transit State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7

Duty to ensure the safety and security of United Nations and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

Duty to release or return United Nations and associated personnel captured or detained

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9

Crimes against United Nations and associated personnel

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack,

shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

## Article 11

### Prevention of crimes against United Nations and associated personnel

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

## Article 12

### Communication of information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

## Article 13

### Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;

(c) The State or States of which the victim is a national; and

(d) Other interested States.

Article 14

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15

Extradition of alleged offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16

Mutual assistance in criminal matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17

Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.

2. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and

(b) To be visited by a representative of that State or those States.

Article 18

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20

Savings clauses

Nothing in this Convention shall affect:

(a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;

(b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;

(c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;

(d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or

(e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22

Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

Review meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24

Signature

**This Convention shall be open for signature by all States, until 31 December 1995, at United Nations Headquarters in New York.**

Article 25

Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

Entry into force

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 29

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

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